

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Griffin Sherbert	Team: Squad #10	CCRB Case #: 202003544	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/12/2020 6:30 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 77	18 Mo. SOL 11/12/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 05/14/2020 4:45 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/26/2020 9:49 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Ronald Cheng	00000	936340	077 PCT
2. POM Rochael Vasquez	10909	960049	077 PCT
3. POM Darryl Chen	29402	903608	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ashley Griffith	19021	958654	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez stopped § 87(2)(b)	
B.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez stopped § 87(2)(b)	
C.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez stopped § 87(2)(b)	
D.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez frisked § 87(2)(b)	
E.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez frisked § 87(2)(b)	
F.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez searched § 87(2)(b)	
G.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez searched § 87(2)(b)	
H.POM Rochael Vasquez	Force: Police Officer Rochael Vasquez used physical force against § 87(2)(b)	
I.LT Ronald Cheng	Force: Lieutenant Ronald Cheng used physical force against § 87(2)(b)	
J.POM Darryl Chen	Force: Police Officer Darryl Chen used physical force against § 87(2)(b)	
K.POM Rochael Vasquez	Force: Police Officer Rochael Vasquez hit § 87(2)(b) against the ground.	

Case Summary

On May 14, 2020, § 87(2)(b) called the IAB Command Center, wherein he filed the following complaint, filed under IAB Source #2020-12454 (**BR01**). On May 26, 2020, the CCRB received this complaint from IAB, under IAB Log #2020-12765.

On May 12, 2020, at approximately 6:30 p.m., § 87(2)(b) and two friends, § 87(2)(b) and § 87(2)(b) were double-parked in front of § 87(2)(b) in Brooklyn, when Police Officer Rochoael Vasquez and Police Officer Ashley Griffith, of the 77th Precinct, stopped his vehicle in a marked NYPD van (**Allegation A, B, and C: Abuse of Authority-Stop**, § 87(2)(g)). PO Vasquez requested § 87(2)(b)'s license and registration, which he provided, and the officers returned to their vehicle. A few minutes later, the officers returned to § 87(2)(b)'s vehicle, wherein PO Vasquez ordered § 87(2)(b) and § 87(2)(b) to exit the vehicle, frisked them for weapons (**Allegations D and E: Abuse of Authority-Frisk**, § 87(2)(g)), and allegedly searched them (**Allegations F and G: Abuse of Authority-Search**, § 87(2)(g)). PO Vasquez approached § 87(2)(b) in the driver seat and ordered him to exit as Lieutenant Ronald Cheng and Police Officer Darryl Chen, of the 77th Precinct, arrived on scene. After § 87(2)(b) repeatedly refused to exit his vehicle, PO Vasquez, Lieutenant Cheng, and PO Chen grabbed him by the arms and shoulders, pulled him out of the vehicle, and allegedly threw him to the ground (**Allegations H, I, and J: Force-Physical force**, § 87(2)(g)). On the ground, § 87(2)(b) alleged that, while Lieutenant Cheng and PO Chen handcuffed him, PO Vasquez pressed his forehead against the ground, causing him to sustain a bruise to his forehead (**Allegation K: Force-Physical force**, § 87(2)(g)). After the officers successfully handcuffed him, § 87(2)(b) was transported to the 77th Precinct stationhouse, under Arrest #§ 87(2)(b) wherein he was charged with § 87(2)(b).

The investigation obtained (5) Body-Worn Camera ("BWC") video from the responding officers, which captured the relevant portions of this incident (**BR02-BR06**).

Findings and Recommendations

Allegation A—Abuse of Authority: Police Officer Rochoael Vasquez stopped § 87(2)(b)

Allegation B—Abuse of Authority: Police Officer Rochoael Vasquez stopped § 87(2)(b)

Allegation C—Abuse of Authority: Police Officer Rochoael Vasquez stopped § 87(2)(b)

§ 87(2)(b) stated (**BR07**) that on May 12, 2020, at approximately 6:00 p.m., he and a friend drove to § 87(2)(b) in Brooklyn, to pick up another friend. Although § 87(2)(b) refused to identify either of his friends, the investigation determined via an NYPD Warrant Check Audit (**BR08**) that his two friends were § 87(2)(b) and § 87(2)(b) though without additional information, the investigation could not determine whether § 87(2)(b) and § 87(2)(b) were the front or back passenger, respectively.

Upon arrival, § 87(2)(b) double-parked his black, 2006 BMW sedan, in front of the location. While waiting for his friend, § 87(2)(b) observed a marked NYPD van, containing PO Vasquez and PO Griffith, pull up and park behind his vehicle. A few minutes later, § 87(2)(b)'s friend exited the location, entered his vehicle, and PO Vasquez and PO Griffith approached the driver and passenger sides, respectively.

PO Vasquez ordered § 87(2)(b) to produce his license and registration, and § 87(2)(b) asked why he was being stopped. After asking several times without receiving a response, § 87(2)(b) provided his license and registration, and PO Vasquez told § 87(2)(b) they stopped him because his license plate was in the wrong spot, and his vehicle was double-parked, and then the officers returned to their RMP.

PO Vasquez's BWC video (**BR02**) begins by showing him and PO Griffith positioned on the respective driver and passenger sides of § 87(2)(b)'s vehicle just after the initiation of the stop. As PO Vasquez asks § 87(2)(b) for the vehicle registration, § 87(2)(b)'s unidentified friend in the front passenger seats asks why they were stopped. PO Griffith's replies, "Man, there's a couple things, right? You're double-parked, that's one thing."

PO Vasquez's (**BR09**) and PO Griffith's (**BR10**) testimonies were consistent with § 87(2)(b).

§ 87(2)(b)'s statement (BR07) and their respective BWC videos (BR02, BR03). On May 12, 2020, at approximately 6:30 p.m., PO Vasquez and PO Griffith conducted a vehicle stop of § 87(2)(b)'s vehicle in front of § 87(2)(b) in Brooklyn, after they observed his vehicle double-parked, and bearing an improperly displayed temporary New Jersey State ("NJS") license plate. After § 87(2)(b) provided his license and registration, the officers returned to their RMP.

Except when necessary to avoid conflict with other traffic, or when in compliance with law or the directions of a police officer or official traffic-control device, no person shall: (1.) Stop, stand or park a vehicle: (a.) On the roadway side of any vehicle stopped, standing or parked at the edge or curb of a street [...] New York State Vehicle & Traffic Law ("NYS VTL"), §1202(a)(1)(a) (BR11).

§ 87(2)(g)

Allegation D—Abuse of Authority: Police Officer Rochael Vasquez frisked § 87(2)(b)

Allegation E—Abuse of Authority: Police Officer Rochael Vasquez frisked § 87(2)(b)

Allegation F—Abuse of Authority: Police Officer Rochael Vasquez searched § 87(2)(b)

Allegation G—Abuse of Authority: Police Officer Rochael Vasquez searched § 87(2)(b)

After providing his identification to PO Vasquez, § 87(2)(b) stated (BR07) that the officers returned to their marked NYPD van. § 87(2)(b) denied that either officer remarked about the odor of marijuana and denied that there was any marijuana in the vehicle. A few minutes later, an unmarked RMP sedan, containing Lieutenant Cheng and PO Chen, arrived and parked next to § 87(2)(b)'s vehicle, as PO Vasquez and PO Griffith returned. PO Vasquez first ordered his friend in the front passenger seat to exit, patted down the exterior of his legs and torso, and then put his hands into his pants pockets. Afterward, PO Vasquez ordered his other friend seated in the rear to exit, and then frisked and searched him as well.

At the 30-second mark of PO Vasquez's BWC (BR02), § 87(2)(b) provides his vehicle registration to PO Vasquez, tells the officers he purchased the vehicle in New Jersey, and the officers return to their RMP. The BWC does not capture PO Vasquez or PO Griffith make any remark about the odor of marijuana to each other or § 87(2)(b). At the 1:40 minute mark, inside the RMP, the BWC (BR02) captures PO Griffith calling the New Jersey State ("NJS") Troopers office to verify whether the temporary tags on § 87(2)(b)'s vehicle are valid. At the 6:00 minute mark, PO Griffith confirms over the phone with Sgt. Picari of the NJS Troopers that § 87(2)(b)'s temporary license plates are neither valid nor registered with the New Jersey DMV.

At the 6:40 minute mark (BR02), the officers return to § 87(2)(b)'s vehicle, wherein PO Vasquez orders the individual in the front passenger seat to exit a few times, and after initially refusing, he ultimately complies. PO Vasquez asks if he has any weapons on him, the individual replies no, and PO Vasquez tells him to put his hands on top of the vehicle. At the 7:30 minute mark, PO Vasquez frisks the front male passenger, and a few seconds later, appears to complete the frisk, and tells the front passenger to step to the side. While PO Vasquez's BWC (BR02) does not appear to show him enter the individual's pockets after concluding the frisk; PO Griffith's BWC (BR03) conclusively shows, between 07:00 and 07:30, that PO Vasquez's only frisks the front passenger, and does not enter or otherwise search his pockets. At 08:00 of PO Vasquez's BWC (BR02), he approaches the rear passenger side door, and orders the male individual in the back seat to exit. After the male exits, the BWC (BR02) shows PO Vasquez frisk him by patting down the exterior of his legs, without entering into his pockets, and then tells him to step to the side as well.

Although not mentioned in either of their BWC videos (BR02, BR03) or any other documentary evidence, PO Vasquez (BR09) and PO Griffith (BR10) consistently stated that, when they initially approached the vehicle and requested § 87(2)(b) produce his license and the vehicle registration, they noticed the odor of marijuana emanating from his vehicle. As corroborated by their

BWC footage (**BR02, BR03**), the officers stated (**BR09, BR10**) that upon returning to their vehicle, PO Griffith called the NJS Troopers to check the validity of § 87(2)(b)'s temporary license plate. However, the NJS Troopers could not find any record of § 87(2)(b)'s temporary license plate, nor any record of the vehicle being registered to § 87(2)(b). As such, PO Vasquez and PO Griffith determined that the temporary license plate and vehicle registration were fraudulent.

The officers returned to § 87(2)(b)'s vehicle, wherein PO Vasquez asked the male in the front passenger seat to exit, frisked him, and then asked the rear passenger to exit, and frisked him as well. Although PO Vasquez stated (**BR09**) that he frisked the two individuals solely for his safety and to make sure he did not have any weapons on him, he was unable to articulate or recall the specific observations or circumstances present during the incident to support his suspicion the individuals were armed or otherwise posed a threat to his safety. PO Vasquez denied that he searched or entered the pockets of either male passenger.

In People v Chestnut, the court established that the smell of marihuana smoke, with nothing more, is sufficient to provide police officers with probable cause to search an automobile and its occupants. People v. Chestnut, 43 A.D.2d 260 (App. Div. 3rd Dept. 1974) (**BR12**).

§ 87(2)(g)

§ 87(2)(g)

Allegation H—Force: Police Officer Rochael Vasquez used physical force against § 87(2)(b)

Allegation I—Force: Lieutenant Ronald Cheng used physical force against § 87(2)(b)

Allegation J—Force: Police Officer Darryl Chen used physical force against § 87(2)(b)

Allegation K—Force: Police Officer Rochael Vasquez hit § 87(2)(b) against the ground.

§ 87(2)(b) stated (**BR07**) that, after his friends had been removed from the vehicle, PO Vasquez approached and ordered him to exit. § 87(2)(b) repeatedly asked why he was being removed from his vehicle, and refused to exit until PO Vasquez provided a reason. As Lieutenant Cheng and PO Chen exited the unmarked RMP sedan and approached, PO Vasquez grabbed § 87(2)(b)'s arm, told him that his temporary plates were forged, and ordered him to exit.

As § 87(2)(b) continued refusing to exit and disputing that his temporary plates were forged, he leaned over to grab the title document for his vehicle from the glove compartment, wherein PO Vasquez, Lieutenant Cheng, and PO Chen grabbed § 87(2)(b) by his arms and shoulders, pulled him out of the vehicle, and threw him on the ground. Although § 87(2)(b) denied refusing to comply with the officers' orders or resisting arrest, he acknowledged that Lieutenant Cheng and PO Chen struggled to hold him on the ground chest-first and repeatedly ordered him to put his hands behind

his back. § 87(2)(b) stated that while Lieutenant Cheng and PO Chen pulled his arms behind his back and handcuffed him, PO Vasquez pushed his face against the pavement, causing him to sustain bruising to his face and forehead. Once handcuffed, the officers transported § 87(2)(b) to the 77th Precinct stationhouse.

PO Vasquez's BWC (**BR02**), at the 8:30 minute mark, shows him approach § 87(2)(b) seated in the driver seat, and orders him to exit. § 87(2)(b) asks why, and PO Vasquez replies that "the plates are fake," which he and PO Griffith confirmed with the NJ State Troopers. § 87(2)(b) disputes that his temporary license plates are fake, and refuses to exit the vehicle. PO Vasquez repeatedly orders § 87(2)(b) to exit, tells him that his license plates are fake, and that he is going to be handcuffed and taken to the stationhouse. § 87(2)(b) continues to refuse to exit the vehicle.

At the 10:10 minute mark of PO Vasquez's BWC (**BR02**), Lieutenant Cheng and PO Chen approach § 87(2)(b)'s vehicle to assist PO Vasquez, who informs them that he is going to "pull § 87(2)(b) out," of the vehicle, and confirms that § 87(2)(b) is under arrest. At the 10:55 minute mark, Lieutenant Cheng, PO Chen, and PO Vasquez grab ahold of § 87(2)(b)'s arms and shoulders and begin to physically pull § 87(2)(b) out of his vehicle. As § 87(2)(b) is pulled out, he stands briefly and continues to resist complying with the officers. At 04:18 of Lieutenant Cheng's BWC (**BR04**), as Lt. Cheng and PO Vasquez pull § 87(2)(b) to a standing position, § 87(2)(b) repeatedly says get off me and braces his arm against the open car door, as the officers struggle to control his movements. At 04:25 of Lieutenant Cheng's BWC (**BR04**), PO Chen is seen wrapping his arms around § 87(2)(b)'s back and torso to overcome his resistance to being removed from the car, and after successfully pulling him away from the door, PO Chen and PO Vasquez guide § 87(2)(b) to the ground holding his arms and shoulders. PO Vasquez and PO Chen hold § 87(2)(b) on the ground by placing their hands on his shoulders and back, and begin handcuffing him.

At 04:43 of Lieutenant Cheng's BWC (**BR04**), PO Chen is captured briefly placing his forearm on top of § 87(2)(b)'s head and upper neck area to prevent any further resistance, while PO Vasquez completes handcuffing him. Once successfully handcuffed, PO Chen removes his forearm, the officers lift § 87(2)(b) to his feet, and escort him to the waiting prisoner van.

§ 87(2)(g) PO Vasquez testified (**BR09**) that after removing the other passengers from § 87(2)(b)'s vehicle, he approached the driver side, asked § 87(2)(b) to exit the vehicle, and he refused. PO Vasquez informed § 87(2)(b) that the vehicle registration and temporary license plate were not registered and "fake," and ordered him to exit the vehicle again, however, § 87(2)(b) continued to refuse. PO Vasquez stated that while he ordered § 87(2)(b) to exit the vehicle "more than 15 times," which § 87(2)(b) wholly refused, Lieutenant Chang and PO Chen responded and approached to assist him.

PO Vasquez, along with Lieutenant Chang and PO Chen, grabbed § 87(2)(b)'s left arm and continued ordering him to exit the vehicle. § 87(2)(b) continued to refuse and resisted by tensing his arm and pulling it away from the officers. PO Vasquez then grabbed § 87(2)(b)'s left arm again, and pulled him out of the vehicle to a standing position, where he continued to resist by tensing and stiffening his arms, and pulling them away from the officers. While PO Vasquez acknowledged that he and the other officers brought § 87(2)(b) to the ground after removing him from the vehicle, he stated that rather than intentionally bringing him to the ground, § 87(2)(b) and the officers lost their balance and fell to the ground as a result of the struggle to gain control and compliance from § 87(2)(b). Once on the ground, PO Vasquez and PO Chen were able to pull § 87(2)(b)'s arms behind his back and successfully handcuff him. PO Vasquez denied that he slammed or pressed § 87(2)(b)'s forehead into the ground, did not recall § 87(2)(b) remark that he was injured or recall him request medical attention, and was neither aware, nor later informed that § 87(2)(b) was injured or had sustained any bruising as a result. Once successfully handcuffed, the officers placed § 87(2)(b) into the RMP, and transported him to 77th Precinct stationhouse for arrest processing.

Threat, Resistance, Injury ("TRI") report § 87(2)(b) (**BR13**), prepared by Captain Hugo Dominguez of the 73rd Precinct, in regard to this incident, § 87(2)(g)

Capt. Dominguez reported that, following the vehicle stop and subsequent determination that § 87(2)(b)'s temporary New Jersey tag and registration were fraudulent, officers informed § 87(2)(b) he was under arrest, and § 87(2)(b) refused to comply and exit the vehicle. Capt. Dominguez reported that the officers used the minimum force necessary to place § 87(2)(b) under arrest, summarized as PO Vasquez, LT Cheng, and PO Chen grabbing § 87(2)(b) removing him from the vehicle, and placing him onto the ground to facilitate handcuffing him. TRI § 87(2)(b) included three attached suffixes, prepared by Lieutenant Cheng (BR14), PO Vasquez (BR14), and PO Chen (BR16), respectively, which reported that § 87(2)(b) wrestled and grappled with the officers in active resistance to being arrested, and that the officers engaged in wrestling, grappling, and utilized a forcible takedown against § 87(2)(b) in order to overcome his resistance. The attached suffixes further noted that § 87(2)(b) was not injured, and refused medical attention.

Medical Treatment of Prisoner ("MTP") #§ 87(2)(b) (BR17), prepared by PO Griffith, reported that while § 87(2)(b) sustained bruising to his "forehead while resisting arrest," he neither requested nor required medical attention, and refused medical attention when offered at both the scene and at the 77th Precinct stationhouse.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situations in which this is not safe and/or appropriate, MOS will use only the reasonable force necessary to gain control or custody of a subject. In determining whether the use of force is reasonable, members of the service should consider the following: (a.) The nature and severity of the crime/circumstances; (b.) Actions taken by the subject; (c.) Duration of the action; (d.) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; (e.) Whether the subject is actively resisting custody; (f.) Whether the subject is attempting to evade arrest by flight; (g.) Number of subjects in comparison to the number of MOS; (h.) Size, age, and condition of the subject in comparison to the MOS; (i.) Subject's violent history, if known; (j.) Presence of hostile crowd or agitators; (k.) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence. Patrol Guide, Procedure 221-01 (BR18).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) has been a party (**BR19**).
- § 87(2)(b)
- This is the first CCRB complaint in which § 87(2)(b) has been a party (**BR21**).
- PO Vasquez, a five-year-member-of-service, has had 12 prior CCRB complaints filed against, with a total of 32 allegations, two of which were substantiated (see Officer History).
 - In CCRB #201806017, a vehicle stop allegation was pleaded against PO Vasquez, which the CCRB substantiated, and recommended formalized training, and the NYPD declined to take disciplinary action in regards.
 - In CCRB #201906017, a property damage allegation was pleaded against PO Vasquez, which the CCRB substantiated, and recommended formalized training, which the NYPD lowered and issued instructions to PO Vasquez as a penalty.
 - In CCRB #202001676, vehicle stop, vehicle search, frisk, and search of a person allegations have been pleaded against PO Vasquez, pending investigation.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- On April 1, 2021, the CCRB received confirmation from the NYC Comptroller's Office that § 87(2)(b) filed a Notice of Claim in regard to this incident, wherein, inter alia, he claimed he was falsely arrested, subjected to excessive force, and his property was damaged, and seeks \$500,000 in redress (**BR22**).
- According to the Office of Court Administration, § 87(2)(b) has not been criminally convicted in NYC (**BR23**).
- § 87(2)(b)
- § 87(2)(b) (**BR24**).
- According to the Office of Court Administration, § 87(2)(b) has not been criminally convicted in NYC (**BR25**).

Squad No.: 10

Investigator:	<u>Griffin Sherbert</u>	<u>Inv. Griffin Sherbert</u>	<u>01/25/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>1/25/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date

CCRB Case # 202003544